PRESENTED AT

2017 Renewable Energy Law
January 31-February 1, 2017
Austin, Texas

Wanted: Dead or Alive – EPA's Clean Power Plan Context and Prognosis

Jeff Civins
Jim Braddock

Author Contact Information:
Jeff Civins
Haynes and Boone, LLP
Austin, TX 78701
Jeff.Civins@haynesboone.com
512.867.8477
Jim Braddock
Haynes and Boone, LLP
Austin, TX 78701
James.Braddock@haynesboone.com
512.867.8462

Wanted: Dead or Alive -- EPA's Clean Power Plan
Context and Prognosis

By

Jeff Civins
Jim Braddock
Haynes and Boone, LLP

In August of 2015, to implement a key component of President Obama's Climate Action Plan, the United States Environmental Protection Agency ("EPA") promulgated the Clean Power Plan ("CPP"), regulating greenhouse gas ("GHG")[1] emissions from existing fossil-fuel-fired power plants. Because the CPP had far-reaching implications for the energy sector and its various segments, its validity and merits have been the focus of contentious administrative, judicial, and political debate. With the ascendancy to the presidency of Donald Trump, the question is whether the CPP has any continued viability or whether it should be pronounced dead, and buried. This paper provides factual, legislative, regulatory, and judicial context for the CPP and then considers the ramifications for the CPP of this change in executive branch, offering a prognosis.

Factual, Legislative, Regulatory, and Judicial Context

Factual

The revolution in the domestic production and consumption of energy, driven by the combined deployment of horizontal drilling and hydraulic fracturing, has resulted in a redistribution of the relative contributions of power by various segments of the energy sector. That redistribution has primarily resulted from market forces, but has been affected as well by regulation, in particular, by the federal Clean Air Act, as implemented by the EPA, including by its promulgation of the CPP.

Attached is a chart that provides a simplistic overview of the energy sector and of the relationship of its various segments to each other. As to power production, the Energy Information Agency or EIA reports that in 2015 the five energy consuming industries, with their approximate percentages, were as follows: electric power—40%; transportation—28%; industrial—22%; residential—7%; and commercial—4%.[2] As to energy sources, the EIA

[1] EPA explains GHGs "act like a blanket around Earth, trapping energy in the atmosphere and causing it to warm" --the so-called greenhouse effect. EPA explains that although this effect is both natural and necessary to support life on Earth, the excessive buildup of those gases can change Earth's climate and result in dangerous effects to human health and welfare and to ecosystems, which is why GHGs are of regulatory concern. https://www.epa.gov/climatechange/climate-change-basic-information. Unlike conventional pollutants, whose effect is direct and regional, GHGs' effect, for the most part, is indirect – the consequences of climate change – and global. EPA refers to manmade GHG emissions, primarily from fossil fuel combustion, as carbon pollution. Carbon is shorthand for carbon dioxide (CO_2), the most prevalent GHG and the one to which other GHGs, like methane, are compared.

[2] http://www.eia.gov/energyexplained/?page=us_energy_home

reports the U.S. consumed about 98 quadrillion Btus, of which 36 % was from petroleum, 29% from natural gas, 16% from coal, 10% from renewable, and 9% from nuclear. Of the renewables, approximately 49 % was from biomass, 25% from hydroelectric, 19% from wind, 6% from solar, and 2% from geothermal.[3] As to power consumption, the EIA notes that the U.S. imported about 9% of the energy it consumed in the form of petroleum, and of the 91% of the remainder it consumed, produced about 89 quadrillion Btus, of which approximately 32% was from natural gas, 28% from petroleum, 21% from coal, 11% from renewables, and 9% from nuclear.[4]

How those percentages may change in the future will depend, in part, how each energy source fares under the Act's regulatory programs and, in particular, on whether and to what extent they generate conventional air pollutants, on the one hand, and GHGs on the other. The CPP, with its focus on emissions of GHGs from existing fossil-fuel fired power plants, and how states chose to implement it had the potential to significantly affect that energy mix. As discussed below, the tortuous path to implementation of the CPP is about to come to an end, which itself will result in a change in the projected mix of energy sources.

In its publication, Annual Energy Outlook 2017 (January 5, 2017),[5] the EIA compares a case assuming the CPP is not implemented with a reference case to see how its absence could affect energy markets and emissions. In the reference case, overall domestic energy consumption remains relatively flat, but the fuel mix changes significantly, with natural gas use increasing, petroleum consumption remaining relatively flat, and coal consumption in the electric power sector decreasing its market share in favor of natural gas and renewables. In the reference case, domestic energy production continues to increase, led by natural gas and renewables. In most cases, energy related CO_2 decreases, but with the highest emissions projected in the no CPP case.

The EIA Outlook also found that, as demand grows modestly, the primary driver for new capacity in the reference case is the retirement of older, less efficient fossil fuel units—largely spurred by the CPP and the near-term availability of renewable energy tax credits. Even if the CPP is not implemented, low natural gas prices and the tax credits result in natural gas and renewables as the primary sources of new generation capacity. The future generation mix is sensitive to the price of natural gas and the growth in electricity demand.

Legislative

The most complex of all environmental statutes, the federal Clean Air Act (the "Act") consists of over 400 pages of provisions.[6] EPA's regulations implementing it, found in Parts 50 through 98 of Title 40 of the Code of Federal Regulations, occupy over a foot and a half of shelf space.[7] As originally enacted in 1955 and amended in 1963, the Act's goal was quite modest—to provide research and technical assistance relating to air pollution control, leaving regulatory authority to states and local governments.

---

[3] Id.
[4] Id.
[5] http://www.eia.gov/outlooks/aeo/pdf/0383(2017).pdf
[6] In PDF from the U.S. Senate on the agency's website]
[7] Parts 83 and 84 are reserved.

In 1970, the Act was amended to establish for the first time a major federal air pollution regulatory program. In that same year, EPA, the agency charged with responsibility for implementing that program, was created by Congress.

Like other federal pollution statutes, the Act contemplates that EPA and its state counterparts will work together, in the spirit of "cooperative federalism." It provides for EPA to set minimum criteria for programs for which states will take responsibility, with EPA retaining an oversight role.

The basic charge of the 1970 Amendments – to improve air quality – has not changed. The Act was substantially amended--in 1977 and 1990--to add a number of significant regulatory programs. For over a quarter of a century since, however, it has not been changed at all, despite ever increasing concerns over global warming and the failure of the Act, as it presently exists, to expressly address them.

Although a number of states and regions had adopted or considered adopting GHG programs, federal legislative attempts in Obama's first administration to comprehensively regulate GHGs foundered. In 2009, for example, the House passed the American Clean Energy and Security Act, a GHG cap and trade bill, but the Senate did not, and it never became law.

In its decision in Massachusetts v. EPA, 549 U.S. 497 (2007), however, the Supreme Court found that the United States Environmental Protection Agency (EPA) had authority to regulate GHGs under the Act. The Supreme Court held that GHGs were air pollutants and that EPA, in order to regulate, must determine whether GHGs from mobile sources were contributing to an endangerment of public health.

Regulatory

Under the Obama administration, EPA made the determination that GHG emissions "endanger" public health and welfare—the so-called endangerment finding. EPA then promulgated a cascading series of regulations to regulate GHGs. Those regulations included a requirement that major sources under the agency's Title V operating permit program and major new sources or modifications of existing sources under its prevention of significant deterioration or PSD permitting program address CO_2 emissions. Various parties challenged the validity of those regulations. Although it found fault with aspects of EPA's approach, the Supreme Court generally upheld EPA's control of GHGs through the permitting programs, in Utility Air Regulatory Group (UARG) v. EPA, 573 U.S. __, 134 S. Ct. 2427 (2014).

Under the agency's PSD program, major sources and modifications are required to employ best available control technology or BACT, as well as to insure that specified PSD increments are not exceeded—to protect existing air quality even if National Ambient Air Quality Standards or NAAQS would, notwithstanding, not be violated. In its March 2011 GHG PSD best available control technology or BACT guidance, EPA notes the relevance of economic, energy, and other environmental impacts, and explains that, in most cases, energy efficiency improvements will satisfy BACT and may extend to non-emitting units like electric fans. The portion of the PSD

program dealing with NAAQS and PSD increments is inapplicable to GHGs in the absence of any NAAQS addressing them.

On January 25, 2013, in conjunction with his announcement of his Climate Action Plan, President Obama issued a presidential memorandum directing EPA issue a proposal to address "carbon pollution" from both new power plants and modified, reconstructed, and existing power plants.[8] In response, EPA embarked on a series of regulatory actions to implement standards for both new and existing power plants.[9]

In some regards, from an industry perspective, the failure of Congress to enact GHG legislation was unfortunate. Federal legislation likely would have: provided for a tailored approach to the regulation of GHGs, obviating the need for regulation under the Act; established rules of the road giving certainty as to what was required; provided uniformity, rather than a patchwork of regional and state rules; and avoided the potential for common law liability.

NSPS for New, Modified, and Reconstructed Fossil Fuel-fired Electric Utility Generating Units

Pursuant to its authority under section 111(b) of the Act, on April 13, 2012, EPA had proposed new source performance standards or NSPS for CO_2 emissions from new affected fossil fuel-fired electric utility generating units. These rules were highly controversial in requiring coal fired power plants to meet the same standards as gas-fired power plants, which would require that they implement carbon capture and sequestration or CCS.

On September 20, 2013, after evaluating more than 2.5 million comments and in light of continuing changes in the electricity sector, EPA decided to withdraw its proposal and to propose new NSPS instead. On January 8, 2014, EPA proposed CO_2 emission standards applicable to newly constructed fossil fuel fired electric utility steam generating units and natural gas fired stationary combustion turbines. 79 Fed. Reg. 1430. EPA proposed establishing separate CO_2 emission standards for natural gas-fired stationary combustion turbines and for coal-fired electric steam generating units (utility boilers and Integrated Gasification Combined Cycle or IGCC units), which effectively would require instead partial implementation of carbon capture and sequestration by coal-fired units and combined cycle technology for natural gas-fired units. On June 2, 2014, EPA proposed NSPS for modified and reconstructed fossil fuel fired electric utility steam generating units and natural gas fired stationary combustion turbines. 79 Fed. Reg. 34960 June 18, 2014).

On August 3, 2015, EPA issued its final Carbon Pollution Standards for new, modified, and reconstructed fossil fuel-fired power plants. 80 Fed.Reg. 64510 *et seq*. (Oct. 23, 2015). The final rule set separate standards for new power plants fueled by natural gas and coal. New natural gas power plants could emit no more than 1,000 pounds (lbs) of carbon dioxide per megawatt-hour (MWh) of electricity produced, which is achievable with the latest combined cycle technology. New coal power plants could emit no more than 1,400 lbs CO_2/MWh, which

[8] *See* 80 Fed. Reg. 56593 (Oil and Natural Gas Sector: Emission Standards for New and Modified Sources).
[9] The focus of these actions was on CO_2 and on power plants. The Climate Action Plan dealt with GHGs more generally, including methane. In June of 2016, EPA promulgated new source performance standards or NSPS to cut methane and volatile organic compound emissions from the oil and natural gas industry.

requires the use of CCS. On August 2, 2016, a number of states, including a number of significant coal producers, filed a petition for review in the United States Court of Appeals for the DC Circuit challenging the final rule as in excess of statutory authority and otherwise arbitrary, capricious, an abuse of discretion, and not in accordance with law.[10]

Standards for Existing Fossil Fuel-fired Electric Utility Generating Units—the CPP

In June of 2014, EPA proposed its CPP – significant new GHG requirements for existing power plants based on section 111(d) of the Act, as an outgrowth of the Climate Action Plan. 79 Fed. Reg. 3480 (June 18, 2014). Section 111(d), which has been little used, requires states to establish EPA-approved existing source performance standards for categories of industrial facilities for which the agency has established NSPS.

Unlike section 111(b), which applies to new sources, section 111(d) applies to existing sources. Under section 111(b), EPA must list categories of stationary sources that cause or contribute to air pollution that likely endanger public health or welfare and then regulate emissions from new sources and some modified sources within those source categories by promulgating a standard of performance or NSPS. By contrast, under section 111(d), EPA may regulate existing sources, according to EPA, if two prerequisites are met: (1) the target pollutant is not otherwise regulated by the Act as either a criteria pollutant under NAAQS or as a hazardous air pollutant or HAP and (2) the category of sources is determined to require an NSPS for the target pollutant. In setting section 111(d) standards, EPA is required to consider the useful life of the affected source.

Challengers to the CPP, among other things, noted a discrepancy between the senate version of section 111(d), upon which EPA relied, and the house version; they rely on the house version to argue that EPA may not regulate if an applicable HAP standard exists. The challengers asserted that EPA's adoption of MATS precluded adoption of Section 111(d) standards for power plants even though MATS did not regulate GHGs.

On August 3, 2015, the same day it published its final NSPS pursuant to section 111(b), EPA, after considering more than 4.3 million comments, issued the final version of its CPP and proposed, as a federal implementation plan or FIP, a model rule to assist states in implementing it. In this rulemaking, EPA explained it had determined the "best system of emissions reduction ("BSER") that was demonstrated for CO_2 for fossil fuel-fired power plants by examining technologies and measures already being used, taking into account technologies and measures beyond the fence line of affected facilities.

In the final CPP, EPA established interim and final CO_2 emission performance rates for two subcategories of fossil fuel-fired electric utility generating units that states can—but are not required to—apply directly to their units: 1,305 lbs/MWh for existing fossil fuel-fired electric steam generating units (generally, coal fired power plants) and 771 lbs/MWh for existing natural gas combined cycle units. Because of the way the interconnected system of electricity generation works in this country and the wide range of strategies available to generators, EPA

[10] http://www.ago.wv.gov/publicresources/epa/Documents/16-1264%20date%20stamped%20Petition%20for%20Review%20Methane%20Rule%20(M0132075xCECC6).pdf

asserted these rates were reasonable and achievable over time, noting that states had until 2030 to meet them.

EPA explained it was attempting to maximize the range of choices available to states. To do so, EPA established statewide goals in two alternative forms that were equivalent to the category-specific CO_2 emission performance rates: (1) a statewide rate-based goal measured in pounds of CO_2 per megawatt hour (lbs/MWh) and (2) a statewide mass-based goal measured in total short tons of CO_2 emissions.

In the final CPP, EPA determined that BSER comprised three, rather than four building blocks it had proposed, that individually and together reduce the carbon intensity of electricity generation: (1) increasing the operational efficiency of existing coal-fired power plants; (2) shifting electricity generation from higher emitting fossil fuel-fired steam power plants (generally coal-fired) to lower emitting natural gas-fired power plants; and (3) increasing electricity generation from renewable sources of energy like wind and solar.

According to EPA, the CPP calls on higher-emitting sources to make the greater amount of reductions, typically at lower cost. The agency noted that power plants can work in concert, using mechanisms like emissions trading, to lower the overall carbon intensity of electricity generation. The final rule dropped the fourth building block of demand-side energy efficiency although suggesting that states may nonetheless rely on it. It also refined the three other building blocks.

In determining BSER, EPA explained:

> [EPA] considered the ranges of reductions that can be achieved at coal, oil, and gas plants at reasonable cost by application of each building block, considering both stringency and time. These three building blocks are approaches that are available to all affected electric generating units.
>
> In assessing the BSER, EPA recognized the interconnected generation and distribution of power within the electricity grid and based our analysis on the three established regional electricity interconnects: the Western interconnection, the Eastern interconnection and the Electricity Reliability Council of Texas interconnection.
>
> EPA applied the building blocks to all of the coal plants and all of the natural gas power plants in each region to produce regional emission performance rates for each category.
>
> From the three resulting regional coal plant rates, and the three regional natural gas power plant rates, EPA chose the most achievable rate for each category to arrive at equitable CO_2 emission performance rates for the country that constitute the BSER.

> The same CO_2 emission performance rates for fossil steam and for natural gas combined cycle were then applied to all affected sources in each state to arrive at individual statewide rate-based and mass-based goals. Each state has a different goal based upon its own particular mix of affected sources.[11]

Judicial

Like the companion NSPS for new affected fossil fuel-fired electric utility generating units, the CPP was challenged. In fact, E&E's Energy Wire reports that less than 12 hours after publication, the CPP "became the most heavily litigated environmental regulation ever," with challenges filed by 27 states and countless industry groups in numerous different cases.[12] All of the petitions were consolidated in West Virginia v. EPA. A group of 18 states and District of Columbia and six municipalities moved to intervene on behalf of EPA, as did a number of other entities. The petitioners filed motions to stay the regulations, which EPA has opposed and the DC Circuit Court denied, but the Supreme Court, in February 2016, surprisingly granted petitioners' request for stay, stopping the CPP in its tracks. The DC Circuit Court heard oral arguments this fall. But, in the meantime, states were faced with deadlines under the CPP, so many states pursued the dual course of challenging the CPP and drafting a plan to comply with it.

Now What?

As noted, EPA and states supportive of the CPP were battling in the DC Court of Appeals to uphold the CPP on its merits. It was presumed that regardless of which side won in the Court of Appeals, the battle then would move to the Supreme Court, whose decision to stay it perhaps signaled a willingness to closely examine the CPP's validity.

In the meantime, the companion NSPS rule is under challenge also. If that challenge were to be successful and the NSPS vacated, one of the statutory underpinnings for the CPP would be removed, undermining the jurisdiction of the EPA to promulgate that rule and thus its validity.

Since then, there has been an election, and the president is now Donald Trump, who has suggested that climate change is a Chinese hoax and whose nominee for EPA Administrator, Scott Pruitt, as Oklahoma's attorney general, describing himself as a 'leading advocate against the EPA's activist agenda, has sued EPA on 13 occasions, including specifically over the CPP.

A headline in the politics section headlines of the January 20, 2017 New York Times announced, "With Trump in Charge, Climate Change References Purged from [White House] Website." The article explains that this change was effected "[w]ithin moments of the inauguration," with one notable exception, a reference to President Trump's vow to eliminate the Obama administrations climate change policies.[13] The White House website states: "President Trump is committed to

---

[11] Clean Power Plan—Technical Summary for States. http://www3.epa.gov/airquality/cpptoolbox/technical-summary-for-states.pdf

[12] *See* http://www.eenews.net/interactive/clean_power_lan#legal_challenge_status_chart for a summary of state positions with regard to the CPP.

[13] .https://www.nytimes.com/2017/01/20/us/politics/trump-white-house-website.html?_r=0

eliminating harmful and unnecessary policies such as the Climate Action Plan…"[14] And, of course, President Trump will be nominating a new Supreme Court Justice who presumably would not be inclined to uphold the CPP or possibly as well the companion NSPS's validity. Additionally, legislation has been introduced in the house and senate—the "Separation of Powers Restoration Act of 2016," which would eliminate the judicial concept of Chevron deference, that is, that a court presume that the interpretation of an agency charged with implementing an ambiguous statute is, in general, entitled to deference. *See Chevron U.S.A. v. NRDC*, 467 U.S. 837 (1984).

There are a number of options available to the new Administration to try to undo what the Obama administration has done under the rubric of the president Obama's Climate Action Plan. In an online interview, Jody Freeman, a Harvard law school professor and former advisor to President Obama, discusses some of the obstacles the Trump administration will face in seeking to dismantle, among other things, the CPP.[15] The discussion below draws liberally from her observations, identifying steps the administration might take to dismantle the CPP and the obstacles the administration might face in taking them.

As to the Paris Accord, President Trump might decide to withdraw, although in November of 2016, following the election, he reportedly says he has an open mind over it. Withdrawal from the Paris agreement would take four years. Another option would be to withdraw from the original treaty establishing the international climate talks, the 1992 UN Framework Convention on Climate Change, but that treaty was unanimously ratified by Congress and negotiated by a Republican president. Finally, the president could also simply not meet the pledge for Paris and not implement the CPP and other programs that underlie the U.S.'s pledge.

Domestically, of course, the easiest course for the administration would be to "slow walk regulations" by slow-walking enforcement. That approach is likely to engender law suits and opposition by career staff and the possibility of ethics inquiries by independent inspector generals. The administration also can ask Congress for less money for the agency.

As to the CPP litigation, the Department of Justice might seek to confess judgment, although that approach is problematic and other parties to the litigation supporting the CPP would object and continue to defend it. The Department of Justice also might ask for a stay of the litigation and request a voluntary remand so EPA can consider rulemaking to repeal or revise the CPP. This option likely would be challenged by those parties seeking to uphold the rule. The new administration-led EPA would need to jump through the regulatory hoop of rulemaking; it could not by fiat undo the CPP. EPA also could seek to withdraw by rulemaking the most controversial portion of the CPP, the beyond the fence line requirements, or to otherwise modify the rule.

The Administration might also seek to undo the lynchpin for EPA's GHG rulemaking efforts—the endangerment finding—although such an attack would be much more difficult given the extensive record that was compiled in support of that rulemaking.

---

[14] https://www.whitehouse.gov/america-first-energy

[15] "If Trump wants to dismantle Obama's EPA rules, here are all the obstacles he'll face." http://www.vox.com/energy-and-environment/2016/12/7/13855470/donald-trump-epa-climate-regulations

Were the EPA to either repeal the CPP or promulgate a replacement, or to seek to undo the endangerment finding, it would have to be able to establish, against a challenge, that its action was non-arbitrary. The Supreme Court, in *FCC v. Fox Television Stations, Inc.*, 556 US 529, 129 S.Ct. 1800 (2009), explains:

> …the agency must show that there are good reasons for the new policy. But it need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates. This means that the agency need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate. Sometimes it must—when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account... It would be arbitrary or capricious to ignore such matters. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.

Id. At 1812.

On the legislative front, the Congress, both houses of which are dominated by the Republicans, might prohibit EPA from spending money on the CPP. Congress employed a similar approach years ago to eviscerate the employer trip reduction program, which EPA also has established under the Act to reduce larger employers' employees in certain ozone non-attainment areas to reduce employee vehicle trips and miles. Congress also might attempt to use the Budget Reconciliation process to override the CPP without the possibility of filibuster or other procedural delays. And, of course, Congress also could seek legislative changes to the Act that would vitiate the CPP. Senate Democrats, however, have vowed to filibuster any major changes to the Act.

Although all these changes would impact fossil fuel fired power generation, as the EIA report indicates market forces will continue to drive power generation from coal to natural gas to renewables and, possibly, to nuclear power. Moreover, individual states and regions are free to develop and implement their own GHG programs. The EIA Annual Energy Outlook 2017 notes, for example:

> California state law SB-32, which was passed in 2016, requires statewide greenhouse gas emissions to be 40% below the 1990 level by 2030. This law has cross-cutting effects in California, particularly on electricity and transportation emissions, and also has national implications because of the size of California's energy market.

So, even were the Trump administration successful in undoing the CPP, progress towards carbon reduction likely will continue, although more slowly.

Conclusion

As is apparent from this discussion, the Act and the programs required by it are incredibly complex and result in layers of regulation on sources of air contaminants in general and on fossil-fuel-fired power plants in particular. Of these layers of regulation, none is likely more far-reaching and none more controversial than the CPP.

The net result of these layers of regulation generally and of the CPP in particular is to require fossil fuel fired power plants to install expensive controls or to shut down. In general, coal fired power plants are affected more greatly than gas fired. Perhaps, however, the elimination of the CPP will result in the retirement of a lesser number of coal fired power plants. The likely elimination of the CPP, by administrative, judicial, or legislative means, however, is unlikely to be a panacea for coal.

Coal, of course, has been under pressure from other quarters as well, from the shale gas revolution and the rapid decrease in cost of natural gas and the increasingly more competitive cost of renewables, and from concerted campaigns by NGOs, especially the Sierra Club, against coal. President Trump has promised to bring back coal, but that promise may be difficult to keep because the headwinds from market forces likely will continue to prevail even if the regulatory impetus is removed.

Natural gas too has faced increased pressure as well, from NGOs concerned about fracking and about GHG emissions generally. The Sierra Club, for example, now has a beyond natural gas campaign.[16]

There is, of course, a strong push towards renewables, but because wind and solar are only intermittent, they cannot provide the answer to our energy needs, certainly not until energy storage becomes more viable. And other aspects of the Climate Action Plan also will affect the energy sectors, for example, EPA's recently-promulgated NSPS for methane in the oil and gas industry, which the administration may also seek to undo, perhaps, because of the timing of its promulgation, under the rarely used Congressional Review Act.

The uncertainties concerning the viability of the CPP and regarding what, if any, programs might take its place create significant burdens for regulated industries seeking to make business plans and to comply. Finally, the CPP is but one piece of the GHG puzzle; other market and regulatory forces, under state law and other federal regulatory programs, also will affect the nation's energy mix.

[16] https://content.sierraclub.org/creative-archive/sites/content.sierraclub.org.creative-archive/files/pdfs/100_58-Natural-Gas_FactSheet_11_low_0.pdf

The Energy Sector